HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition no. 461 (M/S) 2004

Sandeep Kumar S/o late Sri Nandan Prasad,
Resident of Badrinath Marg, Kotdwar,
District Pauri Garhwal. ----Petitioner.

Versus

1. Civil Judge (Jr. Div.), Kotdwar, Pauri Garhwal,
2. Girish Chandra S/o late Sri Nem Ch. Aggarwal,
3. Vinay Kumar S/o Sri Nem Ch. Aggarwal,
4. Manoj Kumar S/o late Sri Nem Ch. Aggarwal,
   All resident of Near Hanuman Mandir, Malgodam Road,
   Station Road, Kotdwar, Pauri Garhwal,
5. Prakash Chandra Aggarwal S/o late Sri Banshidhar,
6. Shiv Kumar S/o late Sri Nandan Prasad,
   Both r/o Badrinath Marg, Pauri Garhwal. ---Respondents.

Mr. B.P. Nautiyal, learned counsel for the petitioner.
Sri Lok Pal Singh, learned counsel for the respondent nos. 2 to 4.

Hon'ble M.M. Ghildiyal, J.

This writ petition under article 227 of Constitution of India is directed against the order dated 01.11.2002 passed by the Civil Judge (Jr. Div.) Kotdwar, district Pauri Garhwal in original suit no. 20 of 2002 Girish Chandra vs. Prakash Chandra and others by which the trial Court has allowed the application filed under Order-6 Rule 17 of the Code of Civil Procedure, seeking certain amendments in the plaint.

Brief facts of the case are that the plaintiff/ respondent nos. 2 to 4 filed Original Suit no. 20 of 2002 before the trial Court against the defendant/petitioners stating therein that a freehold of Nazool land in plot no. 16, measuring 25 ft. X 45 ft. situated in Badrinath Road Kotdwar in the vicinity of Municipal Board of Kotdwar was granted by the District Magistrate, Pauri

Garhwal for construction of house in the joint names of Nem Chandra, Prakash Chandra Agarwal and Nandan Prasad (i.e. father of the plaintiffs, defendant no. 1 and father of the defendant nos. 2 & 3 respectively). On 14.07.2002, the defendants illegally and without prior permission of the plaintiffs have accumulated the construction materials for construction of windows/doors and for demolishing the northern wall situated in the said undivided property. The plaintiffs have sought relief that the defendants may be restricted from demolishing the northern part and northern wall of joint house, which has been marked with the alphabet "Kha & Gha" in the annexure-"Ka"; further they may be prohibited to do construction of doors and windows in the property in question.

On 06.09.2002, the plaintiffs have filed an application under order-6 Rule 17 of Code of Civil Procedure before the trial Court seeking amendments in the plaint to which the defendants have filed their objection 26.10.2002.

In the amendment application, the plaintiffs have sought permission to incorporate amendment in para no. 9 of the plaint to the affect that "the defendants are fully convergent that in the land in dispute; declaration of the possession and occupation is made out in the name of the Nem Chand and the plaintiff nos. 2 & 3 have executed the freehold deed in their favour which has been registered on 27.04.2000 and 20.05.2000 and now the plaintiffs are the landlords and are in possession of the land in dispute; the plaintiffs have already deposited the amount for making freehold of the Nazool land of their share in the land in dispute".

In para-10 of the plaint the amendment was sought to the effect that “till the legal partition is made, the defendants have no right to do construction/ demolition or alienation in any part of the land, specifically on the northern wall of the property in question; which was going on during the filing of the suit; due to joining of northern aprt of the disputed land; the plot no. 17 would be divided by including the plaintiffs”.

Some other amendments have also sought in para nos. 11 & 12 of the plaint. In ‘a’ part of the relief clause, the amendment was sought that “the defendants may be restricted from making new construction, alienation or demolition in the northern side of the joint land and if the defendants have done such acts, that may be restored”.

Declining the averments made in the application, the defendants in their objection have stated that the plaintiffs have no such land towards the northern side of the northern wall; the defendants did not encroach upon the land of the plaintiffs; the amendment sought for does not fall under the category of subsequent amendment; the plaintiffs were well acquainted with the facts. It is further contended that by adding the new facts the plaintiffs want to carve out a new case; the amendment will change the entire nature of the suit and the amendments are barred by Order-2 Rule-2 of the Code of Civil Procedure.

Having heard learned counsel for the parties and perusing of the record, I am of the view that the Court below in deciding the amendment application has rightly concluded that the subsequent amendment can be implemented after the suit is filed because it avoids multiplicity of the litigation and the Court can decide the case on merits. It is well settled law that in

deciding the amendment applications, the court should not take into account the technicalities of the case rather the Court may vigilant towards the contentment of the litigants. The defendants have every opportunity to defend the case before the Court below. The cause of action and the relief sought for are unchanged so far it pertains to the question of undivided property and merely by adding subsequent amendment, the nature of the suit cannot said to have been changed as the dispute is in between the identical parties. The suit is still pending before the trial Court. Keeping in view the aforesaid facts, the trial Court has rightly allowed the amendment application imposing cost of Rs. 200/-, which I think, in the circumstances, is nominal and justified. The defendants have efficacious remedy by filing additional written statements before the Court below. The defendants by filing the writ petition have occupied the strategy of delaying the hearing of the suit as the suit has been filed long back in the year 2002 and further, the proceedings cannot be initiated in the suit on account of pendency of the writ petition.

This Court is of the view that when efficacious remedy is available to the aggrieved party before the Court below, the same may be availed for speedy disposal of the suit so that the Court below may approach to its conclusion on merits. The writ petition is devoid of merits and is liable to be dismissed.

Accordingly, the writ petition is dismissed in limine. No order as to costs.

(M.M. Ghildiyal, J.)

August 11, 2006:
NCM: